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Report of the Chief Electoral Officer on Recommendations for Legislative Change

April 2010

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April 12, 2010

The Honourable Bill Barisoff
Speaker of the Legislative Assembly
Province of British Columbia
Parliament Buildings
Victoria, British Columbia
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Honourable Speaker:

I have the honour to present the Report of the Chief Electoral Officer on Recommendations for Legislative Change.

This report is submitted to the Legislative Assembly in accordance with section 13(1)(d) of the *Election Act*.

Sincerely,

Harry Neufeld
Chief Electoral Officer
British Columbia

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1 Introduction

Electoral legislation must evolve over time to remain relevant and meet the needs of the citizens it serves. The legislation and the public policies reflected must be sensitive to the aspirations, expectations and societal changes that characterize British Columbia's population. Electoral legislation must also reflect a practical approach to protecting individual rights, providing effective service and resolving electoral administration problems.

In many ways, the *Election Act* of British Columbia reflects a model that other Canadian jurisdictions aspire to achieve. However, there are aspects of the Act that do not fully meet the needs or expectations of the province's citizens and political participants, or that hinder the effective administration and enforcement of the electoral process.

Significant amendments were made to the *Election Act* in May 2008, less than one year before the 2009 General Election. However, there are some new issues that have emerged as a result of new legislative requirements, social change and public expectations.

Following the 2009 General Election, Elections BC consulted with senior election officials, voters, non-voters and political parties to identify the barriers they faced and their suggestions for improving the electoral process in British Columbia. Elections BC also conducted a review of electoral legislation and issues in other Canadian jurisdictions to assess the ways their legislation addressed electoral administration challenges and to identify opportunities to improve the administration of the electoral process in British Columbia.

This report is intended to highlight areas of the *Election Act* that the Chief Electoral Officer believes require technical amendments to facilitate improved service delivery and better meet the needs of British Columbians. It also includes discussion on aspects of public policy that may benefit from a review by legislators to ensure that the electoral laws of the province remain relevant and appropriate in our changing society.

Election administration is a business of details, which requires cautious innovation to preserve the integrity of the electoral process and maintain public confidence. It is in the interests of all British Columbians that electoral laws be fair, effective and sufficiently flexible to address changing needs. The recommendations and comments in this report are made in this spirit.

2 Electoral legislation in British Columbia

The *Canadian Charter of Rights and Freedoms* establishes that Canadian citizens have the right to vote for representatives to provincial and federal parliaments, and to seek election therein. Every Canadian jurisdiction has enacted legislation to give effect to these rights. In British Columbia, the mechanisms that ensure citizens' accessibility to these rights are established in the *Election Act*.

As democracy has evolved in British Columbia, electoral legislation has also evolved. In 1995, a significant legislative change took place when the *Election Act* was completely rewritten and the Chief Electoral Officer (CEO) was made an Officer of the Legislature. Independent electoral administration is one of the universal principles of democratic electoral processes, as described by the United Nations and many non-governmental organizations involved in electoral observation and election monitoring around the globe.

Other universal principles of democratic electoral processes include transparency, secrecy of the vote, accessible voting and voter registration opportunities, and provisions that ensure a "level playing field" for political participants. These principles are all reflected in the *Election Act* in B.C., which has continued to evolve since 1995 to reflect shifting Canadian attitudes about fairness, equity and access to information. The legislation has also been amended to reflect societal and demographic changes to ensure voting and voter registration remains broadly accessible to the electorate.

The *Election Act* has an important role in ensuring fairness in the electoral process by articulating how voters and candidates may access their constitutionally-guaranteed rights and by making the rules known before an election campaign. The Regulations to the Act may only be made by the Chief Electoral Officer, after consultation with the Election Advisory Committee, ensuring that the intent and application of the legislation cannot be inappropriately influenced.

The *Election Act* addresses a broad range of electoral matters, including the appointment of officials, registration of voters, maintenance of the provincial voters list, administration of voting, registration of political parties and constituency associations, regulation of election advertising and electoral financing matters such as election expenses limits and financial disclosure. In many regards the legislation is precisely detailed and procedurally prescriptive. This is a common feature of electoral law across Canada.

The *Election Act* is the rule book for voters, political participants and election administrators. It is central to the conduct of elections and the policies and procedures that support the electoral process. While its prescriptive nature can impede innovation, its precision is a necessary safeguard to ensure that the electoral process is clearly understood and consistently administered.

British Columbia also has unique "direct democracy" legislation in the form of the *Recall and Initiative Act*. This legislation establishes processes whereby voters may petition for the removal of their Member of the Legislative Assembly and petition for new laws or changes to existing laws.

Unlike most Canadian jurisdictions, British Columbia has held a number of referenda in recent years. These events have been conducted under the *Referendum Act*, supported by event-specific Regulations, or under separate legislation enacted specifically for a referendum event. The Chief Electoral Officer is usually consulted in the development of referendum legislation and Regulations to ensure the workability of the provisions.

Other provincial legislation that affects the electoral process includes the *Constitution Act*, which establishes the timing of general elections and by-elections and the qualifications to sit as a Member of the Legislative Assembly; the *Electoral Districts Act*, which establishes the number, boundaries and names of the electoral districts that Members are elected to represent; and the *Electoral Boundaries Commission Act*, which establishes the timing, composition and terms of reference of electoral boundaries commissions. Electoral boundaries commissions, which must include the Chief Electoral Officer as a commissioner, are mandated to periodically review demographic changes and to make recommendations regarding the number, names and boundaries of electoral districts to ensure effective representation of British Columbians in their Legislative Assembly.

3 Electoral administration in British Columbia

The Canadian model of electoral administration is unlike the models used in the United States or in the United Kingdom. In Canada, the federal and provincial/territorial electoral jurisdictions each have a Chief Electoral Officer, usually a non-partisan Officer of the Legislature, who is mandated to administer the electoral process in accordance with the jurisdiction's statutes. This has proven to be an efficient and effective model that provides independent central oversight, standardization of electoral processes and professional electoral administration within each jurisdiction.

In the United Kingdom, the equivalent role of the Chief Electoral Officer is divided between an independent Electoral Commission and government officials at the national and sub-national level. In some cases, sub-national elections are administered by county staff in conjunction with county elections, although different legislation is used for each vote. In the United States, Secretaries of State, who are usually elected officials, are responsible for state election oversight. A bi-partisan commission is responsible for oversight of federal elections and all elections – federal, state and local – are administered by officials at the county level under the supervision of elected county officials. In both nations, responsibility for various aspects of electoral administration is often distributed across a number of organizations and individual roles which can result in duplication of effort and a disjointed approach to client services.

The Chief Electoral Officer in British Columbia is an independent Officer of the Legislature, and is supported in his work by a small permanent staff of specialists in electoral administration. The core staff of Elections BC (the usual name for the Office of the Chief Electoral Officer) support all aspects of planning and delivery of electoral events and the administration of the CEO's ongoing operational responsibilities. As of April 2010, there were 41 core staff working at Elections BC, including the Chief Electoral Officer. During a general election, more than 37,000 temporary officials are hired and trained to administer voting province-wide.

This administrative model facilitates the retention of knowledge and expertise and ensures continuous support to clients, while allowing the necessary additional resources to be recruited and trained to administer events. It provides a consistent approach to legislative interpretation and service delivery and provides a single point of contact for all clients.

This model also positions the Chief Electoral Officer to develop a comprehensive view of electoral law in British Columbia and its effects on voters, political participants and electoral administration.

4 The Election Advisory Committee

The *Election Act* establishes an Election Advisory Committee to advise the Chief Electoral Officer on the functioning of the Act, particularly with respect to the financing provisions of the political process.

The Election Advisory Committee consists of the Chief Electoral Officer, who chairs the committee, two representatives of each registered political party that is represented in the Legislative Assembly, and one representative of each additional registered political party that endorsed candidates in at least one half of the electoral districts in the most recent general election. Members of the Legislative Assembly are not eligible to be members of the Election Advisory Committee.

The Chief Electoral Officer is required to consult the Election Advisory Committee in a number of instances, including before the CEO makes a recommendation to the Legislative Assembly to amend an Act. The Election Advisory Committee was consulted on March 5, 2010 regarding the recommendations for technical amendments proposed by the Chief Electoral Officer. Based on the comments of the Election Advisory Committee members, one recommendation was modified and two were withdrawn. The Election Advisory Committee expressed its support for the recommendations as contained in this report.

The members of the Election Advisory Committee at the time of consultation on the recommendations contained in this report were:

BC Liberal Party	Hector Mackay-Dunn Kelly Reichert
BC NDP	Leslie Kerr Jan O'Brien
Green Party of BC	Murray Weisenberger

5 Approaches to electoral reform

Electoral reform has many faces; it can be as fundamental as changing how votes translate into seats or as seemingly minor as requiring political parties to disclose the addresses of their principal officers. Approaches to electoral reform can include the establishment of commissions, citizens' assemblies or special committees of the Legislature. Legislative changes can result from public consultations, responding to the recommendations of the Chief Electoral Officer or as the result of input to legislators from other stakeholders in the electoral process.

While the Chief Electoral Officer is required to consult with the members of the Election Advisory Committee prior to making recommendations for legislative change, the CEO also consults with the staff of Elections BC, senior election officials, registered political parties and voters. Following each general election, recommendations are developed with a view toward improving accessibility and equity in the electoral process, enhancing transparency or fairness, facilitating compliance and enforcement, providing clarity of legislative intent and addressing new problems that have arisen in the administration of the electoral process.

Consultations by Elections BC take place following each election and between electoral events to ensure that all aspects of electoral administration are considered. Ongoing consultations with senior election officials in other Canadian jurisdictions also contribute to the information the Chief Electoral Officer considers in developing recommendations for amendments to electoral law.

Recommendations for legislative change made by the Chief Electoral Officer are generally restricted to so-called "housekeeping" matters of a technical nature. Specific recommendations for technical amendments to the *Election Act* are contained in section 7 of this report.

Recommendations for amendments to the recall provisions of the *Recall and Initiative Act* were made in November 2003 in the *Report of the Chief Electoral Officer on the Recall Process in British Columbia*. Those recommendations are not repeated in this report. There have been some amendments to the *Recall and Initiative Act* since it came into force in 1995, primarily as consequential amendments arising from amendments to the *Election Act*. Specific recommendations for technical amendments to the *Recall and Initiative Act* are contained in section 8 of this report.

Since 1995 there have been numerous amendments to the *Election Act*. Many of the previous recommendations of the CEO have been acted on, and additional amendments have been made that were not based on recommendations of the Chief Electoral Officer. The Chief Electoral Officer fully respects the authority and mandate of the Legislative Assembly to establish public policy with regard to electoral matters, and appreciates that the Legislative Assembly demonstrates ongoing interest in enhancing the electoral process and in ensuring that the individual and democratic rights of British Columbians are protected.

It is not the role of the Chief Electoral Officer to propose or advocate for new public policy or significant changes to existing public policies in relation to the electoral process. However, the Chief Electoral Officer is uniquely positioned to understand issues and outcomes associated with current public policies as reflected in electoral legislation. Some provisions of the *Election Act* are no longer consistent with national trends in electoral law and administration. In some instances, successful court challenges in other jurisdictions may pose a risk for B.C. legislation withstanding similar challenges. As an Officer of the Legislature, the Chief Electoral Officer has a duty to advise the Members of those matters so they may ensure the ongoing relevance and effectiveness of the legislation.

The *Electoral Boundaries Commission Act* would also benefit from review by legislators. Principles regarding rural representation and tensions between maintaining rural representation levels while ensuring equitable representation by population province-wide should be addressed prior to the establishment of the next electoral boundaries commission following the 2013 General Election.

Matters of public policy that may benefit from review by legislators are described in section 9 of this report.

6 Issues

Electoral administration issues invariably arise that cannot be resolved within the existing legislation. Changes in voter behaviour put pressure on processes that were not designed to accommodate the increased volumes or heightened needs or expectations of voters.

Fixed-date elections were established in 2001 by an amendment to the *Constitution Act*. However, no amendments were made to the *Election Act* at that time to reflect the effects of that change. A number of subsequent amendments have been made to address the effects of fixed-date elections, but issues continue to arise in this regard.

Amendments to the *Election Act* in 2008 resulted in new issues in the application and enforcement of the Act which now require resolution. There also continue to be issues in relation to the administration of the *Recall and Initiative Act*.

Issues in relation to each Act are described in further detail in the following pages.

Specific recommendations for technical amendments to the *Election Act* and *Recall and Initiative Act* are in sections 7 and 8 of this report. Public policy matters that legislators may wish to consider are described in section 9 of this report.

Election Act

Part 1 - Interpretation and application

Significant amendments were made to the *Election Act* in May 2008. The Act establishes that amendments do not apply to an election called within six months after the amendments come into force unless the Chief Electoral Officer publishes a notice in the *British Columbia Gazette* of earlier readiness. The purpose of this provision is to ensure that Elections BC and its clients have time to prepare for and implement the amendments. However, provisions that do not specifically apply to an election are immediately in affect.

These different implementation dates created considerable confusion for voters, candidates and political parties during the October 2008 by-elections in Vancouver-Burrard and Vancouver-Fairview, as some amendments to the Act applied to the by-elections while others did not. This issue could be resolved by creating a six month implementation period for all amendments to the Act.

Part 2 - Election and other officials

The Act establishes that the CEO appoints a District Registrar of Voters (DRV) and a District Electoral Officer (DEO) for each electoral district. Deputies can also be appointed to assist these officials. However, although the CEO can appoint DEOs to future electoral districts in anticipation of electoral district redistribution, the same authority does not extend to the appointment of DRVs, resulting in rescission and appointment of these officials at the time the writs of a general election are issued. It would be more efficient to appoint these officials in advance.

The Act also requires that a Voting Officer be appointed for each ballot box and assigns specific duties to that official. The limiting language in the Act prevents innovation and efficiency in voting places. Over 37,000 election officials were hired for the 2009 General Election, and their roles have become increasingly complex. By removing the specific references to Voting Officer, roles could be simplified and there could be greater flexibility and potential cost savings in staffing voting places.

Part 3 - Calling an election

There is a discrepancy between what the Act requires each writ of election to include with regard to when nomination documents will be accepted, and what is actually contained in the prescribed wording of the writ in the Schedules to the *Election Act*. Although this discrepancy was not problematic when the Act was first brought into force, the subsequent establishment of fixed-date elections has resulted in the discrepancy creating confusion and uncertainty as to when District Electoral Officers are to accept nomination documents. The matter could be resolved by amending section 56 of the Act, or by amending the writ of election as it appears in Form 1 of the Schedules to the Act.

In 2008, two by-elections were conducted less than six months prior to the issuance of the writs for the 2009 General Election. There was considerable public comment at the time questioning the necessity and associated cost of conducting by-elections in close proximity to a fixed-date general election, and the administration of by-elections within six months of the calling of a general election put considerable strain on Elections BC's resources. The by-elections were required by the *Constitution Act*, but the implementation of fixed-date general elections allows legislators to consider permitting some flexibility regarding the requirement for a by-election in the period before a general election. This matter is explored further in section 9 of this report.

Part 4 - Voters

The lowest voter registration rates are for young voters. There is a positive correlation between voting and being registered as a voter before General Voting Day. Individuals may currently register and vote at the age of 18. However, by that age many young people have left school and it is increasingly difficult to reach them with voter registration and voting information. Legislators may wish to consider allowing the provisional registration of individuals when they are 16 years of age. The voting age could remain at 18, but permitting early registration would allow Elections BC to make contact with future voters while they are still in school. Many high school teachers have expressed support for this concept as it would allow meaningful action by their students in the context of civics education.

The intent of the *Election Act* is that voters be registered at their current residential address, and their right to vote in an election is based on the currency and accuracy of that information. Many opportunities exist for voters to register to vote and to update their voter registration information. However, some voters mistakenly believe that they can vote on the basis of the address recorded on the voters list, even if they are no longer resident at that address. An explicit statement in the Act to clarify the requirement that only a voter's current residential address may be used for the purposes of voting would be of significant assistance in administering the Act and ensuring that the integrity of the electoral process is protected.

The residential address options for incarcerated voters continue to be problematic, and amendments to those provisions would be of assistance in allowing these voters to participate in electoral democracy.

The 2009 General Election was the first provincial election in British Columbia at which all voters were required to provide proof of their identity and current residential address in order to receive a ballot. Voters without the necessary documents could be vouched for. Although most voters could meet the new requirements, some fine-tuning of the legislation is necessary to ensure no voters are disfranchised by the identification rules and to provide additional clarity regarding the identity and vouching requirements. To facilitate the voting and voter registration processes in special circumstances, such as institutional care facilities, voters would benefit from modifications to the identity requirements to accommodate the additional challenges they face.

The Act was amended in 2008 to require a door-to-door enumeration of all voters prior to any scheduled general election after September 2009. The voter registration processes as currently established in the Act will be a barrier to efficient and effective door-to-door enumeration, and amendments to those processes will be required to facilitate implementation of this new requirement.

Part 5 - Candidates

The number of candidates in B.C. provincial elections has declined by 33% since 1996, while the number of seats in the Legislative Assembly has increased by 13%. There may be many reasons for the decline, however the recent amendments to the nomination requirements have been cited by some as a barrier. In 2007, the Ontario Superior Court of Justice declared the requirement for a nomination deposit, refundable based on meeting a threshold of electoral support, to be unconstitutional. There is a risk that B.C. legislation in this regard would not withstand a similar constitutional challenge. Refunding nomination deposits based on compliance with electoral financing requirements and elimination of deposits have been trends in Canada for several years. Legislators may wish to consider candidate nomination requirements in B.C. in this context. Current nomination deposit requirements and the basis for reimbursement in all Canadian jurisdictions are provided in Appendix A of this report.

Candidates are now subject to expenses limits during the 60 day pre-campaign period. However, many individuals who intend to be candidates do not file nomination documents until after the writs of election have been issued. As these individuals may not have been in contact with Elections BC prior to that time, they may be unaware of the election financing rules and may not be in compliance with the Act. It would be preferable that Elections BC be advised as soon as possible of individuals who intend to be candidates so they and their financial agents can be made aware of the requirements of the Act. This would support potential candidates while facilitating compliance and effective enforcement of the Act.

The Act requires that nomination documents contain solemn declarations of candidate eligibility, usual name and independent status. There is a cost for making a solemn declaration, and an individual qualified to administer a solemn declaration may not be available in all communities. Replacing the requirement for solemn declarations in nomination documents with a requirement for signed declarations would facilitate the nomination process and remove current barriers.

Amendments in 2008 established that candidates may have representatives present at voter registration proceedings in a voting place. However, additional amendments are required to fully reflect this change.

Candidates and their representatives are permitted access to residential properties under the *Residential Tenancy Act*. However, most candidates and their representatives look to the *Election Act* in this regard. It would be helpful to have similar provisions articulated in that Act. Although it is not currently reflected in public policy, legislators may also wish to consider the effects of the increased number of strata properties on candidates' access to voters. Provisions regarding the posting of election advertising in properties under the *Strata Properties Act* were established in 2008. Comparable provisions regarding candidate access could be established without limiting the rights of the property owners.

Part 6 - Voting

Voters who are absent from the province during an election, whose mobility is impaired or who are in remote areas may vote by mail. However, voters who are overseas or in remote areas without frequent mail service find it very difficult to receive and return their voting packages by the deadline. For a fixed-date election, allowing the distribution of voting packages pre-writ would greatly improve access to their voting rights.

Part 7 - Counting of the vote

There are currently no technical issues with the legislation governing the counting of votes in an election. However, concern has been raised by some candidates regarding the delay between initial count and final count. The delay provided for in the *Election Act* allows the transfer of absentee ballots to the appropriate District Electoral Officer and the necessary screening of certification envelopes to verify their completeness and the registration status of absentee voters. Additionally, the preparations for final count ensure that individuals have not voted twice.

To reduce the period between initial count and final count, a reconsideration of the absentee voting process, including how and when absentee votes are counted, would be necessary. This report does not contain any specific recommendations in this regard. However, Elections BC is reviewing the voting and counting methodology currently in place to identify opportunities for improvement.

Part 8 - Invalid elections

There are no current issues with the legislation in relation to invalid elections.

Part 9 - Registration of political parties and constituency associations

To register a political party or constituency association the financial agent must make a solemn declaration as to the accuracy of one of the registration documents. There is a cost for making a solemn declaration, and an individual qualified to administer a solemn declaration may not be available in all communities. Replacing the requirement for a solemn declaration in these registration documents with a requirement for a signed declaration would facilitate the registration process and remove current barriers.

The Act establishes criteria that must be considered in accepting the name and other forms of identification of a political party. These criteria include a ban on the use of a name or any other form of identification used by another political party registered during the previous 10 years. Many parties are only briefly registered and may never have had their name appear on a ballot. To facilitate the registration process, it would be preferable that only party names or other forms of identification that have appeared on a ballot during the previous 10 years be disqualified.

Part 10 - Election financing

The Act establishes specific responsibilities for financial agents. This is a position of authority and trust, and political parties, candidates and other individuals and organizations required to have financial agents are vulnerable if their financial agent fails to meet the requirements of the Act. There are some individuals who have failed to file reports as required under the *Election Act*. Individuals who fail to meet their responsibilities as a financial agent should be prohibited from acting in that capacity in the future.

The 60 day pre-campaign period was established in 2008, in recognition that campaign activities may commence well before a fixed-date general election. However, there are some inconsistencies in how fundraising deficits are recorded during the pre-campaign period and after an election is called. The rules should be standardized in this regard.

There is a drafting error regarding the retention of tax receipts for prohibited contributions that should be addressed to ensure appropriate records are maintained.

Annual financing reports must be filed before June 30th. Many organizations misinterpret this to mean that June 30th is the deadline, when it is actually June 29th. For clarity, it would be preferable that June 30th be the deadline.

There are many documents required to meet the requirements of the Act in relation to election financing. However, the Act is inconsistent in that some forms must be prescribed by Regulation while others are simply in the form specified by the Chief Electoral Officer. Removing the requirement for a Regulation to establish forms would streamline the process and remove considerable administrative overhead.

The Act requires that a supplementary report be filed if an election financing report or leadership contestant report is found to be incomplete or inaccurate. There are significant penalties for failure to file the original reports, but there are no penalties for failure to file supplementary reports. To ensure full disclosure as contemplated by the Act and to facilitate compliance, penalties are required for failure to file required supplementary reports.

Part 11 - Election communications

Prior to the 2009 General Election, there was a successful legal challenge to the advertising limits for independent election advertising sponsors during the pre-campaign period. The court decision is currently under appeal. Clarity regarding the application of the advertising limits and registration requirements for election advertising sponsors is required.

Election advertising rules do not distinguish between those sponsors conducting full media campaigns and individuals who post handwritten signs in their apartment windows. The *Election Act* does not establish a threshold for registration, resulting in all advertising sponsors being required to register and display disclosure information – including individuals with a simple handmade sign in their window. The *Canada Elections Act* only requires registration by those who sponsor election advertising with a value of $500 or more. Having a consistent registration threshold would prevent the considerable confusion and administrative burden that currently exists.

Some advertising sponsors conduct election advertising when not registered. This is often the result of not understanding the rules, and the likelihood of a prosecution being approved in such cases is low. However, advertising conducted by unregistered sponsors can still have an effect on a campaign and those who do not comply with the Act should be subject to penalties. It would be helpful if the Chief Electoral Officer could impose administrative penalties in such instances.

The definition of election advertising was substantially changed in 2008. One significant change was the intent of the sponsor is no longer a factor in determining whether an advertisement meets the definition of election advertising. The current definition of election advertising includes any advertising message that takes a position on an issue with which a registered political party is associated. This created some concern regarding the ability of individuals and organizations to comment on issues unrelated to the election campaign. This report does not contain any recommendations in this regard. However, legislators may wish to consider these issues when reviewing the Act.

Part 12 - Offences

Amendments to the *Election Act* in 2008 are not consistently reflected in the offences provisions of the Act. The consequences of failure to comply with the requirements of the Act regarding the transmission of election opinion survey results on General Voting Day and exceeding third party advertising limits should be consistent with other provisions of the Act to facilitate compliance and enforcement.

Part 13 - General

The Act establishes that the Chief Electoral Officer may file a certificate with the Supreme Court if a candidate or political party is subject to a specific financial penalty under the Act. An election advertising sponsor who exceeds the advertising limit is subject to a financial penalty, but the CEO does not have authority to file a certificate with the court in that regard. This should be amended to facilitate enforcement of the Act.

Schedules

The Schedules to the *Election Act* contain the writ of election, the ordinary ballot and the write-in ballot. As previously noted, minor amendments to the writ of election would resolve confusion regarding when nomination papers may be accepted by District Electoral Officers in a fixed-date general election.

A writ of election bears the Great Seal. Documents that bear the Great Seal are required to be signed by the Provincial Secretary, a role filled by the Attorney General. The writ as shown in Schedule 1 of the Act does not provide for the required signature, and should be amended accordingly.

Form 3 in the Schedules is the write-in ballot used for many forms of absentee voting. The Schedule requires that a space be provided on the stub of the ballot to record the name of an electoral district. However, there is no requirement elsewhere in the Act to capture this information, and the field serves no purpose. Removal of reference to electoral district on the write-in ballot stub would resolve confusion by election officials.

Recall and Initiative Act

The *Recall and Initiative Act* has some of the same issues as those identified in the *Election Act*. Financing reports of initiative and recall petition proponents, opponents and MLAs require a solemn declaration of the financial agent. Applications for registration as an initiative or recall advertising sponsor require a solemn declaration by an applicant or by a principal officer of an applicant organization. There is a cost for making a solemn declaration, and an individual qualified to administer a solemn declaration may not be available in all communities. Replacing the requirement for a solemn declaration with a requirement for a signed declaration would facilitate compliance and remove current barriers.

Consequential amendments to the *Recall and Initiative Act* as a result of 2008 amendments to the *Election Act* did not correctly address the establishment of initiative petition expenses limits. The base amount for the calculation of expenses limits should be amended.

Unlike the *Election Act*, the Chief Electoral Officer does not have authority to make Regulations under the *Recall and Initiative Act*. Regulations under that Act are made by the Lieutenant Governor in Council. The Act requires a number of forms to be established by Regulation. There is a considerable overhead associated with Regulations and there are often delays in having the necessary forms amended through that process. It would be preferable that the Chief Electoral Officer have authority to specify the forms rather than requiring a Regulation under the *Recall and Initiative Act*.

Legislators may also wish to consider expanding the CEO's authority to make all Regulations regarding the recall process to be consistent with the CEO's authority in the *Election Act*. The initiative process is not an electoral process, therefore the same issues regarding independent administration do not apply.

7 Recommendations for technical amendments to the *Election Act*

Sections 1, 19, 82, 88, 92, 93, 109, 118, 119, 120, 121, 122, 124, 125. 126, 273

The Act specifies that a Voting Officer, with assigned responsibility for the ballot box, must be appointed for each voting station at a voting place. The Voting Officer must be assisted by another election official. This has restricted Elections BC from establishing more effective and cost-efficient models of conducting voting proceedings. By removing the requirement for a Voting Officer and a second election official at each voting station, the District Electoral Officer will be able to maintain control of ballot boxes while gaining flexibility and potential costs savings in the election official staffing model.

> *Recommendation*

The definition of "Voting Officer" should be removed from the definitions in section 1 of the Act. Remove the requirement that a Voting Officer and a second election official be appointed to each voting station. Establish that the District Electoral Officer must appoint sufficient election officials to conduct the election proceedings, without specifying tasks associated with a specific election official's role in a voting place. Replace all references to "Voting Officer" with "the election official responsible".

Section 3(1), (2)

The Act currently allows a six month implementation period for amendments before they apply to an election, unless the CEO publishes a notice of earlier readiness in the *B.C. Gazette*. Many provisions in the Act do not have specific relation to an election, but an implementation period may be necessary for their amendments. Amendments to the Act made in May 2008 did not apply for the October 2008 by-elections, but lack of awareness regarding the varying implementation periods resulted in confusion.

> *Recommendation*

Amendments to the Act should not apply until six months after Royal Assent, unless a *Gazette* notice of readiness is published earlier.

Section 22, consequential amendment: s. 12 (2)(e)

The Act currently allows the CEO to appoint a District Electoral Officer and Deputy District Electoral Officer(s) to future electoral districts. This permits the orderly transition to new districts during redistribution and permits training and appointment of officials in a timely way. No such provision exists for District Registrars of Voters and Deputy District Registrars of Voters. This was problematic in preparations for the 2009 General Election.

› *Recommendation*

Permit the CEO to appoint District Registrars of Voters and Deputy District Registrars of Voters to future electoral districts when an enactment establishes electoral districts that are to take effect at a future time. This will also require an amendment to s. 12(2)(e) regarding the CEO's duties and powers.

Section 29(e)

The Act specifies that in order to vote, voters must be registered in the electoral district in which they are resident. Section 35(1)(b) states that an application for registration must include the address of the place where the voter is resident, and section 32(1)(b) states that an individual may be resident at only one place at a time. However, as the Act does not explicitly state the requirement, some voters assume that they can vote at the address at which they are registered, even if it is not their current residential address.

› *Recommendation*

For certainty, amend section 29(e) to include a requirement for voters to be registered at their current residential address for the purpose of voting.

Section 31(1)

Section 31(1) establishes who may register as a voter. For fixed-date general elections, individuals who will be 18 years of age on or before General Voting Day but who are not 18 prior to the writs being issued are not able to register until the election is called. Individuals who do not meet the other qualifications to register and vote are not able to register until they are fully qualified, even though they will meet those qualifications by General Voting Day. This prevents a number of future eligible voters who are becoming engaged in the electoral process from registering other than in conjunction with voting.

> *Recommendation*

Amend s. 31 to permit individuals who will be fully qualified as of General Voting Day for a fixed-date election to register prior to meeting those qualifications, but no earlier than 60 days before the election is called.

Section 32(4)

For the purposes of voting, individuals imprisoned in penal institutions are not considered to be residents of that institution, but rather can choose as their residence either a place they were resident before being imprisoned, or a place where a spouse, parent, or dependent of theirs is resident. For some incarcerated voters, however, this creates a barrier to participation because they were of "no fixed address" prior to being arrested or have no relatives in B.C. Federal election laws establish that if incarcerated voters do not have another address, they can use the address of either the place they were arrested, or the place of their court trial.

> *Recommendation*

Amend s. 32(4) to include the place of arrest or trial as residence options for incarcerated voters.

Section 41(3)(b)

Section 41(2)(b) establishes that voters must prove their identity and residential address to register in conjunction with voting or to receive a ballot. The Act also establishes that a document issued by the Government of Canada that certifies that the voter is registered as an Indian under the *Indian Act* (Canada) is sufficient identification for this purpose. Most Certificates of Indian Status do not contain residential address information. This created a situation where some voters were not required to provide proof of residential address in order to register in conjunction with voting or to receive a ballot.

Recommendation

- Either clarify that voters who present a Certificate of Indian Status are not required to provide proof of residential address, or remove reference to the Certificate of Indian Status as a single form of identification that can be used to satisfy the requirements of the Act. The Chief Electoral Officer may establish the Certificate of Indian Status as a type of document that may be used for the purposes of satisfying the requirement to prove a voter's identity. An additional document of a type approved by the CEO may be used to prove the voter's residential address.

Sections 41(3), 41.1

Qualified individuals may register in conjunction with any voting opportunity. To satisfy the official of the applicant's identity, the Act requires that the individual provide documentation that proves the individual's identity and place of residence, or be vouched for. The applicant may provide a single piece of identification if it is photo ID, with name and address, issued by the federal or provincial governments or they may provide a Certificate of Indian Status. If the applicant doesn't have a suitable single piece of identification, they must provide two documents, from types authorized by the Chief Electoral Officer, which prove the voter's identity and place of residence. This requirement is a barrier to registration and voting for voters who are in medical facilities, institutions and facilities such as long-term care where the individuals may not have identity documents in their possession.

Recommendation

- As an exception to sections 41(3) and 41.1, provide discretion to election officials administering voting in medical facilities, institutions and long-term care facilities to only require one document with the voter's name, and permit the voter to make a solemn declaration as to the voter's residential address.

Section 41.1

The Act permits voters to vouch for other voters who do not have the necessary identification to vote or register in conjunction with voting. Other individuals who may vouch for a voter include the adult child, grandchild or sibling of the applicant. The legal definition of adult is 19 years of age, but voter qualifications are 18 years of age. This means that an 18 year old voter may vouch for an applicant, but an applicant's 18 year old child, grandchild or sibling may not. This anomaly causes confusion in an already complex process.

Recommendation

Permit a child, grandchild or sibling who is 18 years of age or older to vouch for a voter.

Section 41.2

An individual's right to register as a voter may be challenged by a voter, election official or a candidate representative during registration in conjunction with voting. The Act does not establish how an individual may satisfy the requirements of a challenge. Section 111 of the Act deals with challenges to an individual's right to vote, and establishes that an individual may satisfy such a challenge by providing evidence or making a solemn declaration.

Recommendation

Establish how an individual may satisfy a challenge to their right to register by making parallel provisions to those in s. 111.

Section 42.1, new section

The Act requires the Chief Electoral Officer to conduct, by residence-to-residence visitation, enumerations of all electoral districts before a fixed-date general election. Section 33 establishes that individuals must personally apply to register as a voter, unless automatically registered based on the National Register of Electors. Section 34 requires an individual to personally update their registration information. These requirements will prevent the registration of family members, or residents of the same household, by another individual during enumeration, which could seriously hamper the enumeration effort and result in a poor quality voters list.

Recommendation

Establish that in a residence-to-residence enumeration, an individual may provide the information necessary to register another member of their family, or an individual resident at the same address, or to update that individual's registration information.

Part 5, Division 1

Individuals often publicly declare their intent to become a candidate long before an election is called, and political parties and/or constituency associations typically nominate their potential candidates well in advance of an election. Despite being able to file a standing nomination with Elections BC at any time before an election is called, most nominees do not file nomination papers until close to the start of the election period, and many more wait until after the writs of election are issued, using the ordinary nomination process. A candidate is defined in section 1 of the *Election Act* as "an individual who is a candidate within the meaning of section 63, and for the purposes of Parts 10 and 11 includes an individual who becomes a candidate or who was a candidate." This definition means that for election financing and election communication purposes, individuals are candidates even before they file nomination papers with Elections BC and are therefore subject to the provisions of the *Election Act*. However, until an individual actually files nomination papers, Elections BC has no mechanism for identifying such persons or communicating with them. This means that election financing transactions are likely to be incurred before the person has appointed a financial agent or is even aware of the financing provisions. With the recent establishment of election expenses limits during the 60 day pre-campaign period, this may result in individuals not complying with the requirements of the Act.

> *Recommendation*

Require a notice to be filed with the Chief Electoral Officer within 15 days after an individual declares their intent to become a candidate or is selected by their registered political party and/or constituency association to be a candidate in the next election in an electoral district, whichever is later. This notice of intent should include the designation of a financial agent. This would allow Elections BC to communicate with the potential candidate and financial agent well in advance of the election period to ensure knowledge of and facilitate compliance with the election financing provisions. A notice of intent would not be available for public inspection, and would not form part of the individual's nomination documents.

Sections 54(3)(c)(d)(e), 54(4), 57(3)(b)

Nomination documents require several solemn declarations by the individual nominated: to confirm they are qualified to be nominated, that the name requested to be used on the ballot is their usual name, and that they are an independent candidate (if applicable). There is a cost for making a solemn declaration unless the declaration is taken by an Elections BC employee who is a Commissioner for Taking Affidavits, a Government Agent, or a District Electoral Officer or Deputy District Electoral officer. These officials are not available in all communities, and the requirement for solemn declarations in the nomination process may be a barrier to candidate participation. Candidates already have to submit a nomination deposit; they should be able to complete their nomination documents at no cost.

Recommendation

Replace the requirement for solemn declarations in the nomination process with a requirement for a signed declaration by the individual nominated.

Part 5, Division 3

Section 30(2) of the *Residential Tenancy Act* prohibits landlords from unreasonably restricting access to residential property by candidates or their authorized representatives who are canvassing electors or distributing election material. The legislated provision related to access by candidates to residential rental property would be more accessible if it was in the *Election Act* as that is the Act to which candidates look for direction in this regard.

Recommendation

Add a section in the *Election Act* which guarantees access to rental properties covered by the *Residential Tenancy Act* by candidates or their representatives during a campaign period for the purpose of campaigning

Section 70(2)(b)

The Act permits candidates to have a representative present at voter registration opportunities in a voting place. However, reference to this activity is not included in the provisions for appointment of scrutineers.

Recommendation

Include reference to voter registration in the type of proceedings for which a scrutineer may be appointed.

Section 72

Candidate representatives are required to make a solemn declaration of secrecy before being present at voting or counting proceedings. As candidate representatives can also be appointed to be present at voter registration proceedings in conjunction with voting, a solemn declaration should also be required of those individuals.

> *Recommendation*

Include reference to voter registration in the types of proceedings for which a solemn declaration is required of a candidate representative.

Section 93

Voters without the required identification may be vouched for. However, no provision has been made for individuals vouching for voters to be present in the voting place. During the 2009 General Election, election officials used their discretion under s. 93(2)(e) to permit individuals vouching for voters to attend the voting place. However, specific provision should be made.

> *Recommendation*

Establish that individuals who are vouching for a voter may be present at voting proceedings.

Section 96(2)(a.1)

The Act requires that all voters provide documents that provide their name and residential address, or be vouched for, prior to receiving a ballot, even if those voters have already proven their identity when registering in conjunction with voting. Voters do not appreciate having to prove their identity twice at the same voting location and the requirement creates unnecessary delays in voting proceedings.

> *Recommendation*

Establish that voters who have proven their identity and place of residence when registering in conjunction with voting are not required to again prove their identity in order to receive a ballot.

Section 98(3)(c)

Section 80(4) was amended to refer to site-based voting areas rather than special voting areas. This clause was not amended in s. 98 at the same time and now refers to an undefined term.

› *Recommendation*

Replace reference to a special voting area with reference to a site-based voting area.

Sections 103, 106, 107

The *Election Act* provides generous access to voting for British Columbians, including opportunities for voters who will be away from the province on General Voting Day to vote by mail. This option, however, is not optimal for voters who are in other countries during the election. Currently, voting packages cannot be issued until after an election is called, and must be received at the district electoral office by 8 p.m. on General Voting Day. This 29 day period is not sufficient to serve voters who are in areas with poor mail services. In 2009, 42% of all overseas vote-by-mail packages were not returned by the deadline.

› *Recommendation*

For fixed-date elections, allow voting packages to be requested and issued up to 60 days in advance of the election being called. Establish that voters must not complete and submit their voting packages until after the election is called. Voting packages postmarked or received before the election is called will not be considered at the final count.

Sections 155(3)(m), 157(3)(l)

When registering a political party or constituency association, the organization must submit a statement of assets and liabilities. The financial agent must make a solemn declaration as to the accuracy of the statement. There is a cost for taking a solemn declaration unless the declaration is taken by an Elections BC employee who is a Commissioner for Taking Affidavits, a Government Agent or a District Electoral Officer or Deputy District Electoral Officer. These officials are not available in all communities, and it can be difficult for some applicants to make a solemn declaration at no cost. This may be an impediment to them taking the necessary action to comply with the Act.

› *Recommendation*

Replace the requirement for a solemn declaration with a requirement for a signed declaration of the financial agent.

Section 156(2)(c)

A political party must not be registered if, in the opinion of the CEO, its name or any other form of identification is likely to be confused with the name of another political party that was registered at any time during the previous 10 years. There are currently 76 parties that are registered or were registered in the past 10 years. The majority of these parties never endorsed a candidate for election and therefore their name never appeared on a ballot. New political parties find it increasingly difficult to find suitable names that are sufficiently different from the names of previously registered political parties. For example, the None of the Above Party was registered in November 2004 and deregistered in March 2005. Although the party was registered for only five months, the name cannot be used for 10 years.

› *Recommendation*

Allow a political party to be registered using a name of a political party that has been deregistered for at least four years if the party name was not used on a ballot during the previous 10 years.

Section 156(3)

The *Election Act* came into force in 1995. Section 156(3) only applied to the 10 years after the section came into force. As the 10 year period has now passed, this provision is no longer required.

› *Recommendation*

Repeal s. 156(3) as it is no longer required.

Section 176(1)

The Act establishes who is disqualified from acting as financial agent for a registered political party, registered constituency association, candidate or leadership contestant. A financial agent who fails to file reports required by the *Election Act* may later become the financial agent of another entity. Individuals who do not meet their responsibilities as a financial agent should be disqualified from acting as a financial agent in the future. The disqualification could be for a specified period.

Recommendation

Amend s. 176(1) to include an individual who failed to file any report required under the *Election Act*.

Section 183(3)

Section 183(3) establishes that a deficit incurred in holding a fundraising function during a campaign period is an election expense, but does not include the 60 day pre-campaign period. Election expenses limits now apply to candidates and political parties during the 60 day pre-campaign period and the campaign period. Since a deficit incurred in holding a fundraising function during a campaign period is an election expense, a deficit incurred in holding a fundraising function during the 60 day pre-campaign period should also be an election expense. It is inconsistent not to apply the same rules to fundraising functions during both periods.

Recommendation

Amend s. 183(3) to include fundraising functions held during the 60 day pre-campaign period.

Section 189(4)

Section 189(3) requires a financial agent to retain tax receipts issued for prohibited contributions for a period of at least five years. Due to a drafting error, s. 189(4) refers to destroying the receipts.

Recommendation

Amend s. 189(4) to refer to "obtain the copy of the tax receipt..." instead of "destroy the copy of the tax receipt..."

Sections 207, 208, 209, 210, 211, 212, 245

The CEO has authority to make Regulations under the *Election Act*. The Act establishes that some reports, applications and other information must be in the form prescribed by Regulation. Other sections establish that reports, applications and other information must be in the form specified by the CEO. Regulations have a considerable administrative overhead for Elections BC and other governmental organizations. For consistency and efficiency, it would be preferable that the Act be standardized that the CEO specifies forms rather than requiring Regulations.

› *Recommendation*

Replace references to "the form prescribed by regulation" to "the form specified by the CEO".

Section 220(5)(a)

An annual financial report of a registered political party or registered constituency association may be filed late if a $100 late filing fee is paid. Such reports may be filed "before June 30." "Before June 30" means the report must be filed on or before June 29. Despite Elections BC's attempts at clarification, this causes confusion for financial agents of parties and constituency associations who read the section to mean a report can be filed on June 30. June 30 is a more logical deadline than June 29.

› *Recommendation*

Amend s. 220(5)(a) to read "by June 30" rather than "before June 30."

Section 221

Section 209 requires financial agents of candidates to file financing reports after an election. Section 212 establishes that a supplementary report must be filed if the financial agent or candidate becomes aware that the original report was incomplete or inaccurate or if information contained in it has changed. Section 221 establishes significant penalties if a financing report required under section 209 is not filed, but does not establish penalties for failure to file a supplementary report required under section 212.

› *Recommendation*

Amend section 221(1) from "...the election financing report under section 209..." to "...an election financing report under Division 6 of this Part."

Section 222

Section 211 requires financial agents of leadership contestants to file financing reports after the contest. Section 212 establishes that a supplementary report must be filed if the financial agent or contestant becomes aware that the original report was incomplete or inaccurate or if information contained in it has changed. Section 222 provides for penalties if a financing report required under section 211 is not filed, but does not establish penalties for failure to file a supplementary report required under section 212. This has caused enforcement problems in the past when contestants fail to file necessary supplementary reports.

› *Recommendation*

Amend section 222 (1) from "...the contestant financing report under section 211..." to "...a contestant financing report under Division 6 of this Part."

Section 239

Election advertising sponsors other than candidates, registered political parties and registered constituency associations must be registered under the *Election Act*, regardless of the value of election advertising they sponsor. For example, a handwritten sign posted in an apartment window requires registration by the sponsor. This creates considerable confusion as the *Canada Elections Act* only requires registration if the value of sponsored advertising is $500 or more. The B.C. *Election Act* establishes that election advertising sponsors who sponsor advertising with a value of less than $500 are not required to file an election advertising disclosure report. Significant resources are spent during a general election managing this process due to general misunderstanding of the requirements of the Act.

› *Recommendation*

Registration should only be required if the value of sponsored election advertising is $500 or more. This is consistent with requirements of the *Canada Elections Act*.

Section 239, 264(1)(h)

Other than a candidate, registered political party or registered constituency association, any individual or organization that conducts election advertising must be registered with the Chief Electoral Officer. Although it is an offence to conduct election advertising if not registered, there are cases of such unauthorized advertising. In such instances, Elections BC works with the advertising sponsor and requires them to register, although the advertising has already occurred. It is not likely that such an offence would result in prosecution unless it can be established that the advertising sponsor was fully aware of the requirements and intentionally did not comply. Administrative penalties would greatly assist the Chief Electoral Officer in enforcing the requirements of the Act.

Recommendation

Establish an administrative penalty that may be imposed by the Chief Electoral Officer for conducting election advertising without being registered. To parallel other provisions in the Act regarding contraventions, the consequences of failure to comply with the requirement to register prior to conducting election advertising could also include publication of the name of the individual or organization in the *B.C. Gazette*. Provision could be made for the individual or organization to seek relief from the court from the penalty.

Section 240(3)(b)

An application for registration as an election advertising sponsor requires a solemn declaration of the individual applicant or of a principal officer of an applicant organization. There is a cost for making a solemn declaration unless the declaration is taken by an Elections BC employee who is a Commissioner for Taking Affidavits, a Government Agent or a District Electoral Officer or Deputy District Electoral Officer. These officials are not available in all communities, and it can be difficult for some applicants to have a solemn declaration taken for no cost. This may be an impediment to them taking the necessary action to comply with the Act. Applicants should be able to register without incurring a cost.

Recommendation

Remove the requirement for election advertising sponsor applicants to make a solemn declaration and replace with a requirement for a signed declaration only.

Section 244(1)

Election advertising sponsors (other than candidates, registered political parties and registered constituency associations) must file an election advertising disclosure report if they sponsored election advertising with a value of $500 or higher. There are currently several hundred registered election advertising sponsors. Elections BC does not receive copies of all election advertising conducted, and therefore cannot determine which sponsors have complied with this reporting requirement. Requiring all registered election advertising sponsors to file a disclosure report would ensure compliance. Elections BC's current practice is to request that all registered election advertising sponsors file a report, even if they did not sponsor advertising. There has been a reasonable degree of cooperation, but in the absence of a legislated requirement Elections BC is unsure if all required reports are being filed.

> *Recommendation*

Require all registered election advertising sponsors to file an advertising disclosure report, regardless of the value of advertising sponsored.

Section 264

Section 264(1)(d) refers to s. 233.1 as being in relation to election advertising. Section 233.1 is in relation to transmitting new election opinion survey results on General Voting Day – not election advertising.

Section 264 establishes offences in relation to election advertising and other promotion, but does not establish that exceeding advertising limits as set out in s. 235.1 is an offence. This is contrary to previous legislation which established an offence in this regard. Therefore, although the Act sets advertising limits for third party election advertisers, prescribes penalties for exceeding those limits and establishes that the court may grant relief from the penalties, it does not establish an offence for exceeding the advertising limits. This impeded enforcement of the Act in the 2009 General Election.

> *Recommendation*

For clarity, amend s. 264(1)(d) to add reference to transmitting new election opinion survey results on General Voting Day.

Establish that contravening s. 235.1 by exceeding advertising limits by third party election advertising sponsors is an offence under s. 264.

Section 278(1)

Section 278 establishes that the Chief Electoral Officer may file a certificate with the B.C. Supreme Court if a candidate or political party is subject to a financial penalty for exceeding expenses limits. This facilitates collection of the penalty. Election advertising sponsors that exceed the advertising limit are subject to financial penalties under s. 235.2 of the Act, but the Chief Electoral Officer does not have authority to file a certificate with the court in that regard.

> *Recommendation*
>
> Amend s. 278(1) to include reference to election advertising sponsors who are subject to a penalty under s. 235.2.

Schedules, Form 1

The writ of election establishes the time and dates for the nomination of candidates. Since the establishment of fixed-date elections and changes to the ordinary nomination period, the reference to a specific time on the writ when District Electoral Officers shall accept ordinary nominations is inconsistent with the requirements of sections 56(1)(a) and 57(8). The effect is that DEOs are required by the writ to accept nominations retroactively to 9 a.m. on the day the writ is issued, although s. 56(1)(a) specifies that nominations are to be accepted "between the time the election is called and 1 p.m. on the 10th day after the election is called." This caused considerable confusion in the 2009 General Election.

The writ bears the Great Seal, but does not provide a signature line for the Attorney General to countersign the Seal as required by the *Ministry of Provincial Secretary and Government Services Act*.

Recommendation

Remove reference to 9 a.m. on the writ as established in Form 1 of the Schedule to the *Election Act* to clarify that ordinary nominations are to be accepted by a DEO after the election has been called, or amend s. 56(1). It should be noted that while the *Constitution Act* establishes when a fixed-date election will be held, the Lieutenant Governor's authority is not diminished and a writ may not be issued on the day contemplated by that Act.

Amend the form of the writ to include a signature line for the Attorney General to countersign the Great Seal.

Schedules, Form 3

The write-in ballot in the Schedules to the Act has a space for the name of an electoral district on the ballot stub. The Act does not specify the intended purpose of that field - the electoral district in which voting is taking place or the electoral district of residence of the voter. This has created confusion among election officials, and does not serve any administrative purpose.

Recommendation

Remove reference to electoral district from the stub of the write-in ballot (Form 3) in the Schedules to the Act.

8 Recommendations for technical amendments to the *Recall and Initiative Act*

Sections 4(3), 20(1)(b), 101(1), 148(1)

The CEO does not have authority to make Regulations under the *Recall and Initiative Act*. The Act establishes that some reports and petition sheets must be in the form prescribed by Regulation, but establishes authority for the CEO to specify other forms. Regulations have considerable administrative overhead for Cabinet and other governmental organizations. For efficiency, it would be preferable that the Act be amended to establish authority for the CEO to specify all forms rather than requiring a Regulation.

› *Recommendation*

Establish authority for the Chief Electoral Officer to specify forms under the Act rather than requiring a Regulation.

Section 48(4)

Section 48(4) of the *Recall and Initiative Act* establishes that an initiative petition expenses limit is based on $0.25 per registered voter and is to be adjusted for changes to the CPI for initiative petition periods that begin on or after January 1, 1996. The Act specifies that "for these purposes, section 204(2) and (4) of the *Election Act* applies." Section 204(2) of the *Election Act* was amended in 2008, and now establishes that the CPI as of January 1, 2010 is the base for determining the ratio to be used for making future adjustments to expenses limits.

Section 74 of the *Recall and Initiative Act* was amended as a consequence to the amendments to the *Election Act* to establish a new base amount for calculating initiative vote expenses limits, taking into account the changes to the CPI since January 1, 1996. It would appear that not making a similar amendment to s. 48(4) was an oversight.

› *Recommendation*

Amend the base amount established in section 48(3) to reflect adjustments to the CPI between January 1, 1996 and the present.

Sections 50(4), 97(3)(b), 125(4), 144(3)(b)

A financing report filed by initiative and recall petition proponents, opponents and MLAs requires a solemn declaration of the financial agent as to its accuracy. An application for registration as an initiative or recall advertising sponsor requires a solemn declaration of the individual applicant or of a principal officer of an applicant organization. There is a cost for making a solemn declaration unless the declaration is taken by an Elections BC employee who is a Commissioner for Taking Affidavits, a Government Agent or a District Electoral Officer or Deputy District Electoral Officer. These officials are not available in all communities, and it can be difficult for some financial agents to have a solemn declaration taken for no cost. This may be an impediment to them taking the necessary action to comply with the Act. Financial agents should be able to file financing reports without incurring a cost.

Recommendation

Remove the requirement for financial agents and initiative and recall advertising sponsor applicants to make a solemn declaration and replace with a requirement for a signed declaration.

9 Public policy matters for consideration

It is not the role of the Chief Electoral Officer to advocate for specific public policy, nor to comment on the public policies reflected in law. Rather, the Chief Electoral Officer makes recommendations for technical amendments to legislation within the existing public policy framework.

However, the Chief Electoral Officer is uniquely positioned to identify issues related to existing public policy and it is appropriate that these issues be brought to the attention of legislators. Some changes to public policy may enhance the ability of the CEO to enforce the *Election Act*, or provide remedies to known issues.

The requirement for neutral electoral administration makes it inappropriate for senior election officials to make specific recommendations regarding public policy, and the Chief Electoral Officer does not take a position on the public policy matters raised in this report. Options for potential remedies and the approach taken in other jurisdictions are identified to assist legislators as they consider these issues.

These matters are raised respectfully acknowledging the sole authority of legislators to establish the legal framework of public policies pertaining to electoral democracy in British Columbia.

Election Act

Provisional registration for 16 year olds

Voter registration by voters 18 - 24 years of age is the lowest of all age groups. The most effective means of registering youth may be to approach them before they graduate from high school. Currently, voter registration is restricted to those at least 18 years of age; an age when many youth have left high school. Australia has addressed this issue by allowing provisional voter registration of 17 year olds. Several American states have provisional registration for 16 or 17 year olds, or have introduced Bills or declared their intention to do so in this regard. In British Columbia, using the age of 16 would permit Elections BC to work with schools and the driver licensing program to ensure maximum exposure to the registration process for young voters. The voting age could continue to be 18, with provisional registration becoming an active registration on an individual's 18th birthday.

Enumeration

The Act was amended in 2008 to require a door-to-door enumeration prior to a general election conducted in accordance with section 23(2) of the *Constitution Act*. The requirement for door-to-door enumerations was previously repealed on the basis that it was a very costly and intrusive voter registration method and was no longer required to maintain a complete and current voters list. The quality of the preliminary voters list for the 2009 General Election was much higher than in previous elections, and was due - in part - to the successful mail-based enumeration conducted early that year.

Innovations such as access to the National Register of Electors for new registrations and updates, registration by telephone and online via the Elections BC website, and data sharing by the Insurance Corporation of B.C. and the B.C. Vital Statistics Agency have all contributed to ongoing improvement of voters list quality. The national trend is toward a continuously maintained voters list as is currently in place in B.C.

To ensure the most efficient and cost-effective methodologies are used to ensure a high quality voters list, legislators may consider providing greater flexibility to the CEO to determine the best process for conducting enumerations.

Nomination deposits

Section 55 requires that nominations be accompanied by a deposit of $250. If a candidate receives at least 15% of the total votes accepted, the nomination deposit is refunded. On October 22, 2007 the Ontario Superior Court of Justice declared that a similar provision in the *Ontario Election Act* was invalid because it violated s. 3 of the Canadian Charter of Rights and Freedoms. The ruling was not appealed by the Ontario Attorney General and poses a risk that a similar challenge to the B.C. legislation could be successful. The number of candidates has declined considerably in B.C. elections, and the nomination requirements have been cited by some individuals as a potential barrier to candidacy. Seeking election to a provincial legislature is a constitutional right of citizenship, and nomination requirements must be considered carefully in that context. Many jurisdictions in Canada now refund nomination deposits based on compliance with financial disclosure requirements.

Legislators may wish to consider eliminating the nomination deposit or amending the basis upon which it is refunded. An overview of nomination deposits and the basis for reimbursement in all Canadian jurisdictions is provided in Appendix A of this report.

Volunteer services

The value of services provided by a volunteer is neither a political contribution nor an election expense. A volunteer is defined as "an individual who voluntarily performs the services, and receives no compensation, directly or indirectly, in relation to the services or the time spent providing the services." Many volunteers are individuals who are in the business of providing certain services. For example, website development, sign and material design, editing and translation services. These individuals are actually providing a service for which they would normally charge. Such services are not subject to election expenses limits, nor are the providers disclosed as contributors. This appears to contradict the intent of the election financing and disclosure rules. The *Canada Elections Act* establishes the definition of volunteer labour as "any service provided free of charge by a person outside their working hours, but does not include such a service provided by a person who is self-employed if the service is one that is normally charged for by that person." A similar definition is used in the B.C. *Local Government Act*.

Legislators may consider amending the definition of a volunteer to exclude an individual who is self-employed if the service they provide is one that is normally charged for by that person. This would be consistent with provisions of the *Canada Elections Act* and the B.C. *Local Government Act*.

Election financing provisions

At the time the current *Election Act* was established in 1995, the campaign finance provisions in British Columbia were at the forefront in Canada. Since that time, public policy in this regard has continued to evolve across Canada. It may be appropriate to review current election financing provisions in light of national trends and shifting public expectations and social attitudes. An overview of election financing provisions in all Canadian jurisdictions is provided in Appendix B of this report.

Campaign access to strata properties

Section 30(2) of the *Residential Tenancy Act* prohibits landlords from unreasonably restricting access to residential property by candidates or their authorized representatives who are canvassing electors or distributing election material. Candidates do not have such a right of access to other property, such as strata units, and find it difficult to campaign or canvass effectively in strata properties.

Legislators may wish to consider preventing strata corporations from passing bylaws that prevent access to strata properties by candidates or their agents during a campaign period for the purpose of campaigning. Strata corporations could restrict such activity in common areas, but access to individual properties within a strata development could be allowed by the property owners as in other residential properties.

Disclosure of contributors by charities

Election advertising sponsors are required to disclose the names of contributors that, during the seven months before General Voting Day, gave one or more contributions of money totalling more than $250. The broad definition of election advertising in section 228, which includes "an advertising message that takes a position on an issue with which a registered political party or candidate is associated" means that some issue-based advertising conducted during the three month election advertising period meets that definition.

Some registered charities have conducted advertising which meets the definition of election advertising by virtue of taking a position on issues associated with parties or candidates. The requirement for registered charities to disclose the names of certain contributors can be considered an infringement on the privacy of such donors who expect confidentiality regarding their donations and did not make their contribution with the expectation or understanding that the funds would be used for the purposes of election advertising. Registered charities are not created to conduct election advertising and generally must be non-partisan in order to maintain their status as a registered charity.

Legislators could consider exempting registered charities from the requirement to disclose the names of contributors who give more than $250. Alternatively, the disclosure period could be shortened from six months before the election is called to the period beginning 60 days before the start of the campaign period and ending at the end of the campaign period.

Enforcement

In 2008 the *Election Act* was amended to establish a positive duty for the Chief Electoral Officer to enforce the Act. All financial penalties under the offences provisions of the Act were doubled. However, the Chief Electoral Officer was not provided with any additional administrative penalties to deal with contraventions of the Act. Offences under the Act are criminal offences and it is usually difficult to proceed with a prosecution of offences under the Act, even with an admission of guilt. Consideration could be given to providing the CEO with the ability to impose administrative penalties such as fines and the authority to enter into compliance agreements with individuals or organizations who have contravened some provisions of the Act. These new powers should be confined to instances where there is abundant proof and admission of guilt, such as conducting election advertising without being registered, failing to have the required disclosure statement on election advertising, filing a false or misleading report, campaigning too near a voting place, failure to comply with the legislated obligations of a financial agent, etc.

Constitution Act

Timing of elections

The *Constitution Act* establishes that general elections are to be held on the second Tuesday in May. This date has resulted in perceived conflict with the budget process in the Legislative Assembly. Additionally, the 60 day pre-campaign period overlaps the Throne Speech and budget period, thereby creating a situation where individuals or organizations who publicly comment on those matters may be required to register as an election advertising sponsor and ensure that the appropriate disclosure statements appear on any advertising they sponsor. Legislators could consider amending the definition of election advertising to address this matter. Discussion has occurred in the Legislative Assembly, suggesting that having general elections during the fall would avoid these issues.

Legislators may wish to consider amending the *Constitution Act* to establish that general elections shall be held in the fall. It would be preferable that the date be selected with consideration given to the timing of local government elections, fixed-date federal elections and statutory holidays. Due to weather concerns, concluding voting before the end of October would be preferred.

General Voting on Saturday

The *Constitution Act* establishes that general elections are to be held on the second Tuesday in May. Establishing Saturday as General Voting Day would resolve a number of issues such as the security concerns associated with using schools as voting places while students are present. A Saturday election would make more people available to work as election officials or scrutineers, and would ensure sufficient time between the end of advance voting and General Voting Day to mark the voters lists used for general voting to indicate which voters attended advance voting. It is also possible that having General Voting Day on a Saturday would increase turn-out.

Legislators may wish to consider changing General Voting Day to a Saturday for all provincial general elections and by-elections.

By-elections before a general election

When a vacancy occurs in the Legislative Assembly as the result of the death, resignation, prohibition, recall, or forfeiture of the seat of a Member of the Legislative Assembly, the Speaker must issue a warrant to the Chief Electoral Officer. Section 35(4) of the *Constitution Act* establishes that a writ for a by-election must be issued within six months after a warrant is received by the Chief Electoral Officer. If a vacancy is due to the recall of a Member under the provisions of the *Recall and Initiative Act*, a writ for a by-election must be issued within 90 days of receipt of a warrant.

In 2008, there were two vacancies in the Legislative Assembly. The last possible dates for writs to be issued for the by-elections were January 15, 2009 and March 15, 2009. The by-elections were both called on October 1, 2008, just over six months before writs were issued for the 2009 General Election. There was considerable public concern expressed at that time regarding the need for the by-elections and the associated expenditure of public funds in close proximity to the general election. Turnout by registered voters at the by-elections averaged less than 25%. While there were other factors that may have affected turnout, such as the proximity to federal and local government elections, there was clearly a lack of interest in the by-elections, which many British Columbians felt were unnecessary.

Legislators may wish to consider amending s. 35(4) of the *Constitution Act* to establish that a writ for a by-election does not have to be issued if a vacancy occurs within one year prior to a scheduled general election to be conducted in accordance with s. 23 of that Act. A continued requirement for a by-election if the vacancy is due to the recall of a Member of the Legislative Assembly could be maintained, but legislators may wish to consider extending the period for issuing a writ for a by-election due to a recall to six months rather than the 90 days now required under the Act.

Electoral Boundary Commission Act

Urbanization and rural representation

The Act requires that an electoral boundaries commission be established following every second general election. The next commission must be established following the 2013 General Election. During the work of the Cohen Commission established after the 2005 General Election, it became evident that there is a significant matter of public policy that must be addressed.

Following the preliminary report of the Cohen Commission there was considerable concern raised regarding the preservation of rural representation. The conflict between adherence to the principle of representation by population, which has been established by the Supreme Court of Canada as the primary consideration in setting electoral boundaries, and concerns that the shrinking populations of rural areas will result in a decrease in their representation is a long-standing tension in the establishment of electoral boundaries in Canada.

In B.C., the matter resulted in the introduction of Bill 39 by government in 2007. The Bill, which was not passed, required that rural representation be preserved. Introduction of the Bill disrupted the work of the commission, and ultimately the Legislative Assembly did not accept the commission's recommendations for the number of electoral districts and their boundaries. Instead, a modified map was passed into law to address, in part, the concerns of rural residents. However, with the increasing urbanization of the province and a growing population, there could potentially be a dramatic increase in the number of MLAs required to address the requirements of representation by population if rural representation is to be fully preserved at current levels.

Before the next electoral boundaries commission is appointed, it is important that this matter be addressed in legislation so clear terms of reference may be established. This matter is also described in Appendix Q of the February 14, 2008 final report of the Cohen Commission.

Recall and Initiative Act

Regulations

The Chief Electoral Officer has limited authority to make Regulations under the *Recall and Initiative Act*, and then only with respect to the conduct of an initiative vote. All other Regulations under that Act are made by the Lieutenant Governor in Council after consultation with the CEO. This is inconsistent with the powers of the CEO under the *Election Act*, which establishes authority for the CEO to make all Regulations under that Act after consultation with the Election Advisory Committee. Independent administration and oversight of electoral matters is a fundamental principle of democratic electoral processes. To remove any perception of political interference in the process, it would be appropriate for the CEO to have exclusive authority to make Regulations in relation to the recall process. As the initiative process is not an electoral process, the same principle of independent administration does not apply.

Legislators could consider amendment to s. 171 of the Act to establish authority for the CEO to make Regulations in relation to the recall process.

Report of the Chief Electoral Officer on the Recall Process in British Columbia - November 2003

In November 2003, the Chief Electoral Officer made a report to the Legislative Assembly regarding the recall process in British Columbia. The report identified a number of issues with the existing legislation, and contained specific recommendations for amendments to the Act. To date, only minor amendments have been made as a consequence to amendments to the *Election Act*, and do not address the issues raised in the 2003 report.

It would be appreciated if legislators considered amendment of the *Recall and Initiative Act* to address the issues identified in the 2003 report of the CEO.

Referendum Act

Regulations

The Chief Electoral Officer does not have authority to make Regulations under the *Referendum Act*. Regulations regarding which provisions of the *Election Act* shall apply to the conduct of a referendum require considerable consultation with the CEO on technical matters, and are often established late due to the considerable overhead associated with Regulations of the Lieutenant Governor in Council. The technical aspects of administering the voting and counting processes could be efficiently established by a Regulation of the CEO. Consultation requirements could be established before the CEO made such a Regulation.

Legislators may consider amendment to s. 6 of the *Referendum Act* to establish authority for the CEO to make Regulations in relation to the conduct of a referendum.

Appendices

Appendix A: Nomination requirements in Canadian jurisdictions

All Canadian jurisdictions require potential candidates to complete a nomination process. Prospective candidates are usually required to provide a specific number of voters' signatures endorsing their nomination and /or pay a nomination deposit. The British Columbia *Election Act* currently requires all nominees to submit the signatures of 75 voters and pay a $250 deposit as part of the nomination process. This deposit is refunded if a candidate receives 15% of the total votes accepted and counted in the election. Other Canadian jurisdictions have different nomination deposit requirements and there are a variety of criteria for the reimbursement of the deposit.

Ontario, Quebec and Manitoba do not require nomination deposits. Ontario's deposit requirement was previously set at $200. However, in 2007 the Ontario Superior Court of Justice ruled that the nomination deposit requirement was unconstitutional on the basis that it impaired a political party's ability to communicate with voters by requiring a substantial amount of funds to be committed to nomination deposits that could otherwise be used for communication purposes. The ruling was not appealed. Other provincial/territorial jurisdictions in Canada have deposit amounts ranging from $100 to $500. The federal nomination deposit is $1,000.

The trend for reimbursement of nomination deposits is to base reimbursement on compliance with the financial reporting requirements or a combination of compliance with campaign finance rules and attaining a threshold of electoral success.

The following chart focuses solely on the amount of nomination deposits and the basis upon which they are refunded to candidates in Canadian federal and provincial/territorial jurisdictions. While not included in the chart, most jurisdictions, including British Columbia, refund the nomination deposit to a candidate's agent if the candidate dies between when nominations close and the end of general voting.

Jurisdiction	Nomination Deposit	Criteria for Reimbursement
Canada	$1,000	Candidate files required financial documents
Alberta	$500	1/2 refunded: • if elected; or • receives at least 50% of the votes of the winning candidate; or • withdraws within 48 hours of filing nomination papers 1/2 refunded for filing financing report by deadline
British Columbia	$250	Candidate receives at least 15% of total votes counted or the electoral district is disestablished (standing nominations only)
Manitoba	No deposit	--
New Brunswick	$100	Candidate elected or receives at least 50% of the votes of the winning candidate
Newfoundland and Labrador	$200	Candidate acclaimed, or receives 15% of popular vote and submits financing report/auditor's report, or writ is withdrawn
Northwest Territories	$200	Candidate files required financing report or writ is withdrawn
Nova Scotia	$100	Candidate receives at least 15% of valid votes and complies with expenses provisions or by-election is superseded by general election
Nunavut	$200	Candidate files required financing report or writ is withdrawn
Ontario	No deposit	--
Prince Edward Island	$200	Candidate elected or receives at least 50% of the votes of the winning candidate
Quebec	No deposit	--
Saskatchewan	$100	Candidate elected, or receives at least 50% of the votes received by elected candidate and conforms with expenses provisions, or if election is found void/set aside, or if returning officer refuses to issue certificate of candidacy
Yukon	$200	Candidate receives at least 25% of the votes of the winning candidate

Appendix B: Campaign finance rules in Canadian jurisdictions

The chart on the following pages shows the current provisions regarding campaign finance in Canadian jurisdictions at the federal and provincial/territorial levels.

The chart indicates the application of expenses limits to political parties and candidates, whether there are contribution limits for political parties and candidates, and who is eligible to make contributions. The final column indicates whether political parties and candidates are eligible for reimbursements or allowances from public funds.

Comparisons of other aspects of campaign finance rules, such as disclosure requirements and filing deadlines, are not addressed in this report.

The information shown is at a high level, and nuances, such as a ban on political contributions by charitable organizations in British Columbia, are not shown. For more information, please refer to the *Compendium of Election Administration in Canada: A Comparative Overview* available on the Elections Canada website: www.elections.ca or refer to the appropriate statutes for each jurisdiction. Links to the websites for all Canadian electoral management bodies can be found on the Elections BC website at www.elections.bc.ca.

Jurisdiction	Expenses limits	Contribution limits	Allowable contribution sources			Allowances and public funding
			Outside jurisdiction	Individuals	Corporations and trade unions	
Canada	Party: Yes Candidate: Yes	Party: Yes Candidate: Yes	No	Yes	No	Party If obtains 2% of overall votes or 5% of votes in a candidate's electoral district, receives up to 50% of expenses Allowances $0.4375 x number of valid votes cast in preceding general election for the party each calendar quarter Candidates If obtains 10% of valid votes, receives 15% of expenses; if post-election requirements are met, reimbursement increases to 60%; reimbursement of up to $1,500 for election report audit fees
Alberta	Party: No Candidate: No	Party: Yes Candidate: Yes	No	Yes	Yes	No reimbursement or allowances
British Columbia	Party: Yes Candidate: Yes	Party: No Candidate: No	Yes	Yes	Yes	No reimbursement or allowances
Manitoba	Party: Yes Candidate: Yes	Party: Yes Candidate: Yes	No	Yes	No	Party If obtains 10% of valid votes, receives up to 50% of expenses; reimbursement of up to $16,000 for annual report audit fees and $30,000 for election report audit fees Allowances Minimum: $1.25 x number of valid votes received by each of the party's candidates; $250,000 maximum; or the total expenses paid by the party in the year Candidate If obtains 10% of valid votes, receives 100% of childcare and disability expenses and up to 50% of election expenses; reimbursement of up to $1,500 for audit fees for candidates and leadership contestants

Jurisdiction	Expenses limits	Contribution limits	Allowable contribution sources			Allowances and public funding
			Outside jurisdiction	Individuals	Corporations and trade unions	
New Brunswick	Party: Yes Candidate: Yes	Party: Yes Candidate: Yes	Yes	Yes	Yes	Party No reimbursement Allowances For each party that ran at least 10 candidates, annual allowance of $1.30 plus CPI adjustment x number of valid votes received by each of the party's candidates at last general election Candidate If obtains 10% of valid votes, receives lesser of actual expenses incurred or $0.35 per elector in district + cost of mailing 1 oz. first-class letter to each voter
Newfoundland and Labrador	Party: Yes Candidate: Yes	Party: No Candidate: No	Yes	Yes	Yes	Party No reimbursement or allowances Candidate If obtains 15% of popular vote, receives up to 1/2 of actual expenses; reimbursement of up to $500 for audit fees.
Northwest Territories	Party: No[1] Candidate: Yes	Party: No[1] Candidate: No	No	Yes	Yes	No reimbursement or allowances
Nova Scotia	Party: Yes Candidate: Yes	Party: Yes Candidate: Yes	No	Yes	Yes	Party No reimbursement of election expenses Allowances $1.50 (annually) per vote received in the most recent general election Candidate If obtains 10% of valid votes, receives up to $0.25 per voter

1 Political parties do not exist in the Northwest Territories

Jurisdiction	Expenses limits	Contribution limits	Allowable contribution sources			Allowances and public funding
			Outside jurisdiction	Individuals	Corporations and trade unions	
Nunavut	Party: No[2] Candidate: Yes	Party: No[2] Candidate: Yes	No	Yes	Yes	No reimbursement or allowances
Ontario	Party: Yes Candidate: Yes	Yes/Yes	Yes	Yes	Yes	Party If obtains 15% of popular vote, receives $0.05 per voter; reimbursement of up to $1,488 for audit fees No allowances Candidate If obtains 15% of popular vote, receives up to 20% of incurred expenses; reimbursement of up to $1,240 for audit fees
Prince Edward Island	Party: Yes Candidate: Yes	Party: No Candidate: No	Yes	Yes	Yes	Party No reimbursement Allowances Number of valid votes for candidates at last general election x amount fixed by Lieutenant Governor (maximum $2.00 annually)[3] Candidate $1,500-$3,000 if obtains 15% of popular vote
Quebec	Party: Yes Candidate: Yes	Party: Yes Candidate: Yes	No	Yes (voters only)	No	Party If obtains 1% of valid votes, receives 50% of expenses up to $0.60 per voter; reimbursement of 50% of annual audit, up to $15,000 Allowances Percentage of valid votes obtained x party at last general election x $0.50 x number of voters on list for that election (annually) Candidate If obtais 15% of valid votes, receives 50% of expenses up to $1.00 per voter

2 Political parties do not exist in Nunavut
3 Allowance has not been paid to political parties in Prince Edward Island since 1993

Jurisdiction	Expenses limits	Contribution limits	Allowable contribution sources			Allowances and public funding
			Outside jurisdiction	Individuals	Corporations and trade unions	
Saskatchewan	Party: Yes Candidate: Yes	Party: No Candidate: Yes	Yes	Yes	Yes	Party If obtains 15% of valid votes, receives 50% of expenses; reimbursement of up to $2,658 for audit fees (2010) No allowances Candidate If obtains 15% of valid votes, receives 60% of incurred expenses; reimbursement of up to $863 for audit fees (2010)
Yukon	Party: No Candidate: No	Party: No Candidate: No	Yes	Yes	Yes	No reimbursement or allowances

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